



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 2, 1991

Robert A. MacLean, M.D.
Acting Commissioner
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR91-599

Dear Dr. MacLean :

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 13850.

You have received a request for information relating to the Texas E.M.S. Corporation and a certain individual. You have submitted to us for review as information responsive to the request documents related to a complaint investigation and emergency medical service (EMS) treatment records. You advise us that some of the requested information has been released to the requestor; however, portions of the released documents have been deleted. Your request for an open records determination is limited to the information not disclosed, *i.e.*, to the highlighted portions of the submitted documents. We presume, then, that all information not highlighted has already been publicly disclosed. You claim that information which relates to patient medical treatment is excepted from required public disclosure by section 3(a)(1) of the Open Records Act and that the remainder of the highlighted information is excepted by the "informer's privilege."

Section 3(a)(1) of the Open Records Act excepts from required public disclosure all "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." The Texas legislature recently added section 773.091 to the Texas Health and Safety Code, specifically making confidential

certain records related to emergency medical services. The new confidentiality provision, subsection (b), provides:

Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

Acts 1991, 72d Leg., ch. 605, § 8, at 2203.

We have examined the documents submitted to us for review, conclude that the Texas E.M.S. Corporation patient treatment records must be withheld from public disclosure under section 3(a)(1).

You also claim that some of the requested information is excepted from required public disclosure by the informer's privilege, as incorporated by section 3(a)(1) of the Open Records Act. Open Records Decision No. 470 (1987) at 4. Although the informer's privilege is most commonly applied to information received by law enforcement officials regarding violations of criminal law, it can also apply to information held by administrative officials with a duty of enforcing civil laws. Attorney General Opinion MW-575 (1982). However, where statements do not allege violations of the law, they are not protected by the informer's privilege. Open Records Decision No. 582 (1990).

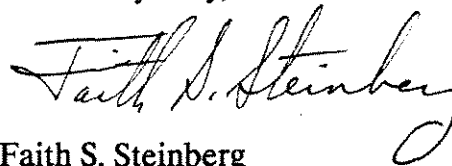
You have submitted to us for review a number of complaint investigation forms and related investigation documents. The first complaint, dated January 4, 1991, alleges a violation of section 773.041(b) of the Health and Safety Code. Although the complaint alleges a violation of law, it is apparent from the documents that the identity of the complainant is known to the subject of the complaint. Once the identity of an informer is disclosed to those who would have cause to resent the complaint, the informer's privilege is no longer applicable. Open Records Decision No. 202 (1978). Accordingly, the complaint of January 4, 1991, may not be withheld from required public disclosure under the informer's privilege.

The complaint of June 26, 1991, which relates to allegations of overcharging for services rendered, may be withheld from required public disclosure, because it alleges actions prohibited by the Deceptive Trade Practices Act, chapter 17 of the Texas Business and Commerce Code. The fact that the complainant contacted the wrong enforcement agency about this complaint does not prevent the governmental body from raising a claim for exception on the complainant's behalf. Therefore, you may withhold the identity of this complainant.

Likewise, you may withhold the identity of the complainant who filed the complaint of September 9, 1991, alleging activity in violation of section 24 of article 6701d, V.T.C.S. The identity of the witness contacted in response to this complaint, however, may not be withheld under the informer's privilege, as the identity of the witness is already known to the defendant. On the other hand, some of the information contained in the witness statement relating to the September 9, 1991, complaint is excepted from required public disclosure by common-law privacy interests. *See* Open Records Decision No. 455 (1987). We have marked such information as it exists in the witness statement, and you must withhold this material from public disclosure.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-599.

Yours very truly,



Faith S. Steinberg
Assistant Attorney General
Opinion Committee

FS/GK/lcd

Ref.: ID# 13850

Enclosure: ORD No. 202, 582, 455

cc: Mr. Ralph D. Balentine, President
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